IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2721 OF 1991

1. Smt.Bakulabai Rama Naikwadi,)
Since deceased,)
Smt.Parubai Sampat Yadav,)
Since deceased by her heirs)
and legal representative)
Mahadeo Malhari Pawar,)
Since deceased by his heirs)
and legal representatives :)

1a. Smt.Rukminibai Mahadeo Pawar,)

1b. Balasaheb Mahadeo Pawar,)
Adult,)

1c. Amol Mahadeo Pawar, Age Adult,)

1d. Vishal Mahadeo Pawar, Adult,)
All residing at Pal,)
Taluka-Karad, District-Satara.).. Petitioners

Versus

Vithoba Babaji Bhagat,)
(Salunkhe) through Power of Attorney)
Krishna Vithoba Bhagat,)
R/o. Pal, Taluka - Karad,)
District - Satara.).. Respondent

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Shri S.G.Karandikar holding for Shri V.B.Rajure for the petitioners.

Shri Prafulla B. Shah for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 29TH SEPTEMBER, 2006

ORAL JUDGMENT:

1. Heard. The petitioners challenge the order passed by the Maharashtra Revenue Tribunal, Pune, on 20th March, 1991 in the Revision Application No.MRT/NS/IV/3/89 filed by the respondent against the concurrent orders passed by the lower authorities, namely, by the Sub Divisional Officer, Satara, in Tenancy Appeal No.69 of 1987 on 4th January, 1989 and by the Additional Tahsildar, Karad, on 30th July, 1984 in Tenancy Case No.227. By the impugned order, the Maharashtra Revenue Tribunal, Pune, while setting aside the orders passed by the lower authorities, had remanded the matter to the Additional Tahsildar, Karad, for fresh inquiry.

2. The petitioner herein is the landlady and the respondent is the tenant in relation to the suit land situated at Village- Pal, Taluka - Karad, District - Satara. Originally the land belonged to Smt.Bakulabai Rama Naikwadi, the landlady, who was a widow on the tiller’s day i.e. 1st April, 1957. She expired on 28th December, 1968. She left behind her daughter by name Parubai Sampat Yadav, as the sole legal representative. During the lifetime of Parubai, she

had executed the Will Deed in favour of the petitioners, that is how the petitioners acquired ownership to the suit land. Parubai expired on or about 3rd April, 1977.

3. The proceedings in terms of the provisions of the Tenancy Act which had commenced in the year 1961 were pending for inquiry, and in the year 1979 the respondent made a statement that Smt. Bakulabai was the widow and that she expired on 28th December, 1968, however, he had not served any notice on the heirs of the deceased landlady within a period of two years from the date of her death informing his willingness to purchase the land. While accepting the said statement, and considering the fact that the tenant had not served any notice expressing the willingness to purchase the land within the specified period in terms of the Section 32F read with Section 31 of the Tenancy Act, the proceedings under Section 32G were disposed of as ineffective. The matter was carried in appeal by the respondent before the Sub Divisional Officer, Satara, without any success. The respondent thereafter preferred revision application wherein the impugned order came to be passed while setting aside the orders passed by the lower authorities and remanded the matter to the Additional Tahsildar,

Karad, for fresh inquiry as per the law.

4. While assailing the impugned order, the learned advocate appearing for the petitioners submitted that the MRT erred in setting aside the orders passed by the lower authorities instead of confirming the concurrent findings by those authorities. In view of the failure on the part of the respondent-tenant to serve a notice on the legal heirs of the widow within a period of two years from the date of death of the widow, no fault could have been found with the findings arrived at by the lower authorities. Once the MRT having confirmed the said finding relating to failure to serve notice, according to the learned advocate appearing for the petitioners, there was no occasion for the MRT to set aside the orders passed by the lower authorities and to remand the matter to Tahsildar, Karad, for fresh inquiry. He has further submitted that in any case the ground on which the matter has been remanded relates to the subject of surrender of land by the tenant to the landlady which was not the subject matter of the inquiry before the lower authorities under Section 32G, while passing the order dated 30th July, 1984 in the Tenancy Case No.227, nor in the Tenancy Appeal No.69 of 1987 before the Sub Divisional Officer which

was disposed of by the order dated 4th January, 1989. He has also submitted that the MRT failed to appreciate that in view of the provisions of law which are very clear to the effect that the tenant loses right to purchase land once no notice is served within a period of two years from the date of death of the widow, the MRT could not have directed inquiry contrary to the provisions of law. Reliance is sought to be placed in the decision of the Apex Court in the matter of **Appa Narsappa Magdum (D) Through LRs. v. Akubai Ganapati Nimbalkar & Ors.,** reported in (1999)4 SCC 443.

5. On the other hand, the learned advocate appearing for the respondent has submitted that the impugned order is an order of remand directing the lower authority to give proper opportunity to the tenant of an agricultural land to establish his rights which are assured under Section 32G of the Tenancy Act. In such circumstances, therefore, the petitioners cannot be allowed to invite interference of this Court in writ jurisdiction inspite of the fact that the petitioners would get ample opportunity to meet all the contentions of the respondent in the inquiry under Section 32G of the Tenancy Act. The provisions of law comprised under Section 32G are

essentially for the benefit of the tenant. According to the learned advocate for the respondent, a fair opportunity should be made available to the tenant to give effect to the rights assured to the tenant under the provisions of the said Act and the MRT had merely sought to give effect to those provisions of the said Act which are beneficial to the tenant, and hence, there cannot be an occasion for interference in such orders in writ jurisdiction.

6. There is no dispute about the fact that the suit land belonged to the widow and she expired on 28th December, 1968. Further that the respondent did not serve any notice upon the legal heirs of the deceased landlady within a period of two years from the date of death of the said landlady. The contention, however, is that Section 32G being essentially for the benefit of the tenant, the proceedings which are sought to be revived bearing in mind the benefits prescribed under the provisions of the said Act for the tenant should not be disturbed and proper opportunity should be given to the parties to establish their rival contentions. It is the contention on behalf of the respondent that in such proceedings, apart from the tenant, the landlady also can get an ample opportunity to prove her contention.

7. Section 32F relates to the right of tenant to purchase agricultural land where the landlord is either a minor or a widow or one who suffers from mental or physical disability. Sub-section (1) thereof provides that where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have the right to purchase such land under Section 32 of the Tenancy Act, within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31. Sub-section (1A) of Section 32F provides that a tenant desirous of exercising the right conferred on him under sub-section (1) thereof shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section. Section 31 deals with the subject of the landlord’s right to terminate tenancy for personal cultivation and for non-agricultural purposes. Sub-section (3) of Section 31 provides that where a

landlord is a minor, or a widow, or a person subject to mental and physical disability then such notice may be given and an application for possession under Section 29 may be made, in case of a minor within one year from the date on which he attains majority; in case of a widow by successor-in-title within one year from the date on which the widow's interest in the land ceases to exist; and within one year from the date on which mental or physical disability ceases to exist.

8. On the conjoint reading of Section 32F and Section 31 of the said Act would disclose that the notice by a tenant expressing his desire to purchase the land in terms of Section 32 has to be served within a period of one year from the expiry of the period during which the landlord is entitled to terminate the tenancy under Section 31, and the period prescribed for the same is of one year. Being so, the notice contemplated for purchase of the land has to be served within a period of two years from the date of death of the landlady when the landlady in relation to the land is a widow. Indeed, the law in that regard is well settled by the decision of the Apex Court in **Appa Narsappa Magdum's case (supra),** wherein it was held thus:-

"Even if we agree with the contention raised on behalf of the appellant that inspite of the earlier decision of the High Court, it was open to the appellant to contend that he was a tenant and had a right to purchase the land under Section 32-F of the Act, it is difficult to appreciate as to how the impugned order passed by the High Court is wrong. Section 32-F provides that in the case where the landlord is a widow, the tenants shall have the right to purchase such land under Section 32 within one year from the expiry of the period during which such a landlord is entitled to terminate the tenancy under Section 31. The landlady died on 8-12-1965. Her successors-in-interest could have filed an application for termination of the tenancy within one year from 8-12-1965 as her interest in the land ceased to exist from that date. Therefore, the tenant ought to have exercised his right under Section 32-F before 8-12-1966. Admittedly, the appellant did not comply with this requirement of Section 32-F. The intimation contemplated by Section 32-F(1)(a) was given by him long after one year had

passed. It was given for the first time on 15-6-1968. It was after his right to purchase the land had come to an end."

9. It is to be noted that Section 32P deals with the subject of power of the authority to resume and dispose of the land not purchased by tenant. Sub-section (1) thereof provides where the purchase of any land by tenant under Section 32 becomes ineffective under Section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under Section 32-F, 32-0, 33-C or 43-1D, the Tribunal may suo motu or on an application made in that behalf, and in case other than those in which the purchase has become ineffective by reason of Section 32-G or 32-M after, after holding a formal inquiry direct that the land shall be disposed of in the manner provided under sub-section (2) thereof. In terms of sub-section (2) thereof, such direction shall provide that the tenant be summarily evicted, and that the land shall, subject to the provisions of Section 15, be surrendered to the former landlord, and when the entire land or any portion thereof cannot be surrendered in accordance with the provisions of Section 15, the entire land or such portion thereof, as the case may be, shall be

disposed of by sale to any person in the order of priority specified thereunder.

10. Considering the above provisions and applying the law of interpretation of the statutes, it is evident that the provisions of law not only prescribe certain conditions for exercise of right to purchase the land by tenant, such conditions being varying in different situations, the provisions of law comprised under the said Act also provide for consequences in case of failure to comply with those conditions. The settled law is that when the law prescribes certain conditions to be complied with in order to enable to claim benefit under the statutory provisions and simultaneously provides for consequences for failure to comply with such conditions, the law in that regard is to be interpreted strictly and any interpretation which would result in defeating the consequences statutorily contemplated is to be avoided.

11. The very fact that the statutory provisions not only provide for right to purchase the land but simultaneously also prescribe conditions to be complied with to enable to exercise such right and at the same time provides for consequences for failure to comply with such conditions, the said statutory

provision in the said Act cannot be considered as beneficial provision only to one category viz. the tenant. The legislature in its wisdom, while making beneficial provision for the tenant, has also taken care to ensure that it does not result in prejudice to otherside i.e. the landlord. The provision in that sense is beneficial to both the sides, and such a provision cannot be interpreted to give benefit to only one class. The contention on behalf of the respondent, therefore, that the remand order merely gives effect to the beneficial provision in favour of the tenant cannot be accepted.

12. As rightly submitted by the learned advocate for the petitioners, the impugned order apparently discloses confirmation of the concurrent findings by the lower authorities to the effect that there was failure on the part of the tenant to avail the benefit assured to him on account of failure on his part to serve the required notice within the period of two years from the date of death of the landlady. Apart from the fact that it is a finding of fact, it was confirmed on the analysis of the materials on record by the MRT. Having confirmed the said finding and considering the provisions of law comprised under Section 32F read with Section 31 of the said Act,

indeed, the MRT had no justification for setting aside the orders passed by the lower authorities and for remanding the matter to Tahsildar, Karad, for fresh inquiry. Failure on the part of the tenant to exercise his right within the period stipulated under the said Act had put to an end to his right to purchase the land and consequences under Section 32-P are bound to follow. Consequently, the MRT had clearly acted in excess of its jurisdiction, while setting aside the orders passed by the lower authorities and remanding the matter to Tahsildar, Karad, for fresh inquiry.

13. The learned advocate for the petitioners is also justified in contending that the order of remand is beyond the scope of the order which was under challenge before the MRT. The subject matter of dispute before the lower authorities related to entitlement of the tenant to exercise his right to purchase the land, and in that regard, the defence of the petitioners was that the tenant had lost his right to purchase the land on account of failure on his part to serve notice within a period of two years from the date of death of the landlady. That being the limited scope of the inquiry and the order being restricted to the said aspect, there was no occasion for the MRT in

the revision to enlarge the scope of the inquiry before the lower authorities and to remand the matter.

14. The attention was also drawn to the paragraph 4 of the decision of the Apex Court in **Appa Narsappa Magdum's case (supra)** wherein the Apex Court has held that mere failure on the part of the legal heirs of the widow to intimate about death of the widow cannot enure to the benefit of the tenant for extending the period of limitation statutorily provided to exercise right of purchase.

15. In the result, therefore, the petition succeeds. The impugned order is hereby quashed and set aside. The rule is made absolute accordingly. No order as to costs.

(R.M.S.KHANDEPARKAR, J)